

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN ALTIERI,

Plaintiffs,

v.

Civil Action No. _____

PORTFOLIO RECOVERY ASSOCIATES, LLC

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for actual and statutory damages brought in response to Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

II. JURISDICTION AND VENUE

2. Jurisdiction of this court arises under 15 U.S.C. §1692k(d), 28 U.S.C. § 1331, and 28 U.S.C. § 1337.
3. Venue is proper in this district under 28 U.S.C. §1391(b) in that the Defendant transacts business here and the conduct complained of occurred here.

III. PARTIES

4. Plaintiff John Altieri is a natural person residing in the County of Erie and State of New York and is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).
5. Defendant Portfolio Recovery Associates, LLC is a foreign business corporation organized and existing under the laws of the State of Virginia and is a "debt collector" as that term is defined by 15 U.S.C. §1692a(6).
6. Defendant regularly attempts to collect debts alleged to be due another.
7. The acts of the Defendant alleged hereinafter were performed by its employees acting within the scope of their actual or apparent authority.

8. All references to “Defendant” herein shall mean the Defendant or an employee of the Defendant.

IV. FACTUAL ALLEGATIONS

9. That the Plaintiff began receiving calls from the Defendant in regard to a debt allegedly incurred by his ex-son-in-law, Michael Westermeyer. This debt will be referred to as “the subject debt.”
10. That the subject debt arose out of a transaction in which money, services or property, which was the subject of the transaction, was primarily for personal, family and/or household purposes. As such, said debt is a “debt” as that term is defined by 15 U.S.C. §1692a(5).
11. That the Plaintiff’s ex-son-in-law thereafter allegedly defaulted on the subject debt.
12. That upon information and belief Defendant, sometime after the alleged default, acquired the subject debt and began to collect on the subject debt.
13. That on or about February 2020, Defendant began calling Plaintiff in regard to the subject debt.
14. That on or about February 2020, Plaintiff advised the Defendant that he is not Mr. Westermeyer and to stop calling him.
15. The Plaintiff advised the Defendant that he was not Michael Westermeyer on multiple occasions.
16. That Plaintiff grew so frustrated with these persistent calls, that as an act of last resort, he disconnected his land line.
17. Despite advising the Defendant to cease communication multiple times, and removing his landline telephone entirely, the Plaintiff continued receiving phone calls from the Defendant through May of 2021.
18. The above-described collection conduct by Defendant in its efforts to collect this alleged debt from Plaintiff were oppressive, deceptive, misleading, unfair and illegal communications in an attempt to collect this alleged debt, all done in violation of numerous and multiple provisions of the FDCPA.
19. These collection actions taken by Defendant, and the collection employees employed by Defendant, were made in violation of multiple provisions of the FDCPA, including but not limited to all of the provisions of those laws cited herein.
20. These violations by Defendant were knowing, willful, negligent and/or intentional, and Defendant did not maintain procedures reasonably adapted to avoid any such violations.

21. Defendant's collection efforts with respect to this alleged debt from Plaintiff caused Plaintiff to suffer concrete and particularized harm because the FDCPA provides Plaintiff with the legally protected right to be treated fairly and truthfully with respect to any action for the collection of any consumer debt.
22. Defendant's deceptive, misleading and unfair representations with respect to its collection effort were material misrepresentations that affected and frustrated Plaintiff's ability to intelligently respond to Defendant's collection efforts.
23. That as a result of Defendant's acts Plaintiff became nervous, upset, anxious, and suffered from emotional distress.

V. CAUSE OF ACTION

24. Plaintiffs repeats, re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 24 above.
25. The conduct of Defendant as described in this complaint violated the Fair Debt Collection Practices Act (15 U.S.C. §1692 et seq.) as follows:
 - A. Defendant violated 15 U.S.C. §1692b(3) by contacting Plaintiff after being told that the alleged debtor Michael Westermeyer, did not live at his home and to stop calling his home.
26. That as a result of the Defendant's FDCPA violations as alleged herein, Plaintiffs became nervous, upset, anxious and suffered from emotional distress.

WHEREFORE. Plaintiff respectfully requests that judgment be entered against the Defendant for:

- (a) Actual damages;
- (b) Statutory damages for pursuant to 15 U.S.C. § 1692k.
- (c) Costs, disbursements and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k.
- (d) For such other and further relief as may be just and proper.

VI. JURY DEMAND

Please take notice that Plaintiff's demands trial by jury in this action.

Dated: July 12, 2021

/s/ Seth J. Andrews, Esq.

Seth J. Andrews, Esq.

Kenneth R. Hiller, Esq.

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